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Carpenters Local Union No. 1506, United Brotherhood of Carpenters and Joiners of America and Sunstone Hotel Investors, LLC, dba Marriott Warner Center Woodland Hills

Carpenters Local Union No. 209, United Brotherhood of Carpenters and Joiners of America and Carignan Construction Company

Carpenters Local Union No. 209, United Brotherhood of Carpenters and Joiners of America and Gregory D. Bynum & Associates, Inc.

Carpenters Local Union No. 209, United Brotherhood of Carpenters and Joiners of America and Odyssey Development Services

Carpenters Local No. 743, United Brotherhood of Carpenters and Joiners of America and The Bakersfield Californian. Cases 31–CC–2121, 31–CC–2122, 31–CC–2123, 31–CC–2124, and 31–CC–2130

December 8, 2005

ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN
AND SCHAUMBER

Charging Party Marriott Warner Center Woodland Hills’ request that the Board accept its late-filed reply brief based on excusable neglect is denied. The asserted reasons for the lateness, as described in counsel’s affidavit, do not rise to the level of excusable neglect. See *Pioneer Investment Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993), and *Elevator Constructors Local 2 (Unitec Elevator Services Co.)*, 337 NLRB 426 (2002).¹

Dated, Washington, D.C. December 8, 2005

Wilma B. Liebman, Member

Peter C. Schaumber Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ While Member Schaumber agrees with those circuit courts that have taken issue with the Board’s unduly harsh application of its procedural rules, see *Patrician Assisted Living*, 339 NLRB 1153 (2003), he agrees that the Board’s decision in *Unitec*, supra, controls the issue presented by the Charging Party’s request. The new procedure suggested by our dissenting colleague was not contemplated by *Unitec* and thus must await agreement of three Board members to adopt.

CHAIRMAN BATTISTA, dissenting.

The issue in this case is whether to accept a party’s brief that is 1 day late. The party asserts that, through “inadvertent oversight,” it “mis-calendared” the due date.

As set forth below, I would accept a tardy brief where: (1) all parties have been contacted by the tardy party, and all of them affirmatively consent to the receipt of the tardy document; and (2) the Board has no valid reason of its own for rejecting the tardy document.

In my view, the Act encourages parties to cooperate and reach accords. Thus, for example, parties can agree to settle a case, even if the remedy is not what the Board would give, provided that the settlement does not offend basic statutory policies.¹ Similarly, parties can agree on a bargaining unit, even if it is not what the Board would impose, provided that the unit does not offend basic statutory policies.² Accordingly, I see no reason why the Board should reject an all-party agreement to accept a tardy brief, provided that fundamental Board interests are not undermined.

Unitec is not to the contrary. In that case, there was simply no response to the motion to receive the tardy brief. However, a nonresponse is not the same as an all-party affirmative agreement to accept a tardy brief.

In sum, I wish to encourage all-party agreements which do not undermine fundamental Board interests. Accordingly, I would permit the Charging Party here to proceed promptly under step one above. Absent an all-party accord, I would reject the brief. With all-party accord, I would accept the brief. In this latter regard, I do not believe that receipt of a brief that is 1 day late would undermine fundamental Board interests.

Dated, Washington, D.C. December 8, 2005

Robert J. Battista Chairman

NATIONAL LABOR RELATIONS BOARD

¹ *Independent Stave*, 287 NLRB 740 (1987).

² *SCM Corp.*, 270 NLRB 885, 886 (1984).